

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012100275

ORDER DENYING REQUEST TO
VACATE DATES AND SET TRIAL
SETTING CONFERENCE; DENYING
STIPULATED REQUEST TO
RELABEL CROSS COMPLAINT; AND
ORDER TO SHOW CAUSE

On February 15, 2013, the parties filed a joint request with the Office of Administrative Hearings (OAH) to vacate the prehearing conference (PHC), February 20, 2013, and hearing date, February 26, 2013, in this matter because the parties had reached settlement agreement. However, execution of the parties' settlement agreement required that OAH relabel the cross-complaint that Student filed on January 2, 2013, as a complaint, assign an OAH case number and agree to the parties' January 7, 2013 stipulation to consolidate Student's cross-complaint and the District's complaint.

APPLICABLE LAW

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Under certain circumstances, an administrative law judge presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner ex rel. Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1029 [“Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge.”].) A party may be ordered to pay expenses of a party, or OAH as a result of “bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. . . .” (Cal. Code Regs. tit. 5, § 3088, subd. (a).) A party may also be ordered to pay costs for failure or refusal, without substantial justification, to comply with an order of the presiding officer. (Govt. Code § 11455.10.) Only the ALJ presiding at the hearing may place expenses at issue. (Cal. Code. Regs., tit. 5, § 3088, subd. (b).)

DISCUSSION

Request to Vacate Dates and for OAH to Accept Student’s Cross-Complaint

After receiving Student’s cross-complaint, OAH contacted Student’s counsel by telephone on January 3, 2013, and informed her that OAH does not accept cross-complaints and that she needed to file a separate complaint for OAH to open a case, generate a new case number and to issue a scheduling order. Therefore, OAH never ruled upon Student’s January 2, 2013 request to consolidate the District’s case and Student’s cross-complaint, and the parties’ January 7, 2013 stipulation to consolidate, as Student’s counsel had not complied with OAH’s request to file a separate complaint.

On January 28, 2013, District’s counsel contacted OAH about the status of Student’s request to consolidate. OAH informed District’s counsel that Student’s counsel still needed to file a separate complaint. On January 29, 2013, Student’s counsel contacted OAH about the status of Student’s request to consolidate. OAH informed Student’s counsel that she still needed to file a separate complaint. OAH contacted Student’s counsel again on January 31, 2013, about the status of the separate complaint. District’s counsel contacted OAH again on February 12, 2013, about the status of the motion to consolidated and was given the same information as to what Student’s counsel needed to do as given on January 28, 2013. On February 14, 2013, OAH informed the parties that their PHC conference statements were due to be filed on February 15, 2013. The parties did not file a PHC conference statement, and instead filed a request to vacate dates, for OAH to assign Student’s cross-complaint a case

number, and for OAH to consolidate the District's and Student's complaint to permit the parties to finalize their settlement agreement.

OAH has informed the parties numerous times of the requirement for OAH to open a new case as to Student's allegations against the District by Student filing a separate complaint, and not a cross-complaint. However, Student's counsel has refused to comply with OAH's request and the parties now wish that OAH bless their resolution of the case despite their failure to comply with OAH's requests for Student's counsel to file a separate complaint and the parties to timely file their PHC statements. OAH will not permit the parties to flaunt OAH's requests by blessing their resolution of this matter in contravention to specific OAH requests.

Accordingly, the parties did not establish good cause for OAH to vacate the PHC and hearing dates, nor for OAH to accept Student's previously filed cross-complaint as a complaint and then to consolidate the parties' action.

Order to Show Cause

Parties to an action under the Individuals with Disabilities Education Act, have a duty to prosecute the case and comply with OAH orders, which include disclosing the party's witnesses and documentary exhibits and otherwise preparing for hearing until otherwise ordered by OAH. Student's unilateral election to not file a separate complaint and the parties not filing a PHC statement, and requesting that OAH approve their request to vacate the PHC and hearing dates despite their failure to comply with OAH orders, is disruptive of the OAH hearing process and resulted in OAH incurring costs for the Administrative Law Judge's preparation for the PHC and to rule upon their frivolous request to vacate dates. The parties have repeatedly failed to comply with OAH processes, despite being informed several times of what OAH required.

The parties are ordered to show cause why Student's and District's counsel should not be required to pay OAH's costs in issuing this order and preparing for the February 20, 2013 PHC. **The parties are ordered to file a written response with OAH by no later than 5:00 p.m. on February 19, 2013**, by facsimile transmission to (916) 376-6319. A copy of the response shall be served upon the opposing party.

Student's response shall address why Student's counsel did not file the separate complaint despite OAH's several requests. Additionally, both parties shall address why they did not file a PHC statement on February 15, 2013. **The parties' written response shall address why OAH should not order either one or both parties to pay OAH's expenses for the issuance of this order and preparation and attendance for the February 20, 2013 PHC. The parties are also required to file concurrently their PHC statements.**

The order to show cause hearing shall take place telephonically on February 20, 2013, at 10:00 a.m. Failure of Student's and District's to file a written response, PHC

statement or to appear telephonically at the PHC on February 20, 2013, may result in additional sanctions, including the dismissal of the District's case.

ORDER

1. The parties' request to vacate the PHC and hearing dates is denied. This matter shall proceed as scheduled.
2. The parties' request that OAH issue Student's cross-complaint an OAH case number and to consolidate the parties' actions is denied.
3. Student shall file a written response why Student's counsel did not file the separate complaint despite OAH's several requests.
4. The parties shall file a written response why they did not file a PHC statement on February 15, 2013.
5. The parties' written response and PHC conference statements shall be filed with OAH and served upon the opposing party by 5:00 p.m., on February 19, 2013.

Dated: February 19, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings